



POLICE DEPARTMENT

September 17, 2007

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Perry Vazquez
Tax Registry No. 898698
Highway Unit No. 4
Disciplinary Case No. 81823/06

The above-named member of the Department appeared before me on April 25, 26 and May 1, 2007, charged with the following:

1. Said Sergeant Perry Vazquez, while assigned to the 42nd Precinct, while on – duty, on or about December 15, 2004, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that having become aware of an allegation of corruption or serious misconduct involving members of the service, did fail and neglect to notify his Commanding Officer and/or the Internal Affairs Bureau Command Center, as required, to wit: an individual known to the Department made an allegation that a marked New York City Police Department RMP struck her vehicle and fled the scene while in pursuit of another vehicle and said Sergeant failed to contact the Internal Affairs Bureau or his Commanding Officer as required. (*As Amended*).

P.G. 203-10 Page. #1, Paragraph 4 – PROHIBITED CONDUCT CODE # 15
P.G. 207-21 Page. #1-2 ALLEGATIONS OF CORRUPTION AND
SERIOUS MISCONDUCT AGAINST MEMBERS
OF THE SERVICE

The Department was represented by Penny Bluford-Garrett. Esq., Department Advocate's Office and Respondent was represented by Anthony Difiore, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

Introduction

On or about December 15, 2004, during the course of a police pursuit of a civilian, Thomas Sprauve, who was driving a sport utility vehicle, civilians allege that the police vehicle struck and damaged parked civilian vehicles on [REDACTED] in the Bronx. One of the owners of the parked vehicles, Joyce Patterson (Joyce), made a police complaint to this effect. When she subsequently picked up her copy of the police report, it noted that an "unknown vehicle" struck her car, which was different than the complaint that she made with the Police Department. Based on the police report, Joyce made another complaint with the Police Department and it was investigated by Sergeant Patrick Kelly of the Patrol Borough Bronx Investigations Unit. The sole question before this Court is whether the Respondent, a patrol supervisor on the night in question, engaged in misconduct by failing to contact the Internal Affairs Bureau or his Commanding Officer about an allegation of corruption or serious misconduct with regard to this civilian complaint.

EVIDENCEThe Department's Case

Department's Exhibit (DX) 1 consists of four black and white photographs taken by a member of the Patrol Borough Bronx Investigations Unit. The first photograph is a Fire Department alarm box (call box) with no visible damage shown. The second

photograph is the complainant, Joyce Patterson's vehicle from the driver's side door and half of the passenger side door on the driver's side. There is a white or light-colored scratch that runs along the driver's side to half of the passenger side door. There is also a bigger, white or light-colored abrasion that runs above the scratch from the driver's side hood along the driver's side of the car. The third photograph is a view of the driver's side passenger door which shows the scratch running to the end of the passenger door. The fourth photograph shows the abrasion running from the driver's door to the driver's side front wheel well area. There are no other visible signs of damage to the vehicle and the scratches and abrasion appear to be minor damage.

The Department called Delois Patterson, Police Officers Francis Soto, David Roberts, Sergeant Patrick Kelly and Detective Robert DiPaola as witnesses.

Delois Patterson

Patterson, a resident of the Bronx works with children at the New York City Housing Authority Community Center Operations Unit. She testified that she lives at [REDACTED] in the Bronx where she has resided for the past 36 years. She said that on December 15, 2004 between 8:00 p.m. and 8:30 p.m., she was standing in front of her building when she observed a 4x4 truck come to a halt. From about five feet away, she observed a blue and white police car behind the truck. As the two police officers exited their vehicle to approach the truck, it sped off.

The police officers then jumped back into their vehicle to chase the suspect and in the process, they ran into about three cars parked on the opposite side of the street.

Patterson said that when the police car struck the first vehicle, the grill on the front of their car loosened and attached to the parked vehicle. The police continued to speed off and drove to the top of the hill at Union Avenue and Home Street. Patterson said she observed the police vehicle then hit a call box located there which caused the grill to then fall off. Patterson testified that the police car continued up the street and she no longer looked to see where it went. Patterson stated that she then went to the building to press her sister's intercom to inform her that a police vehicle struck her parked car.

Patterson testified that it was not until a week later that she spoke to two investigators about what she had observed. Patterson was shown a copy of four photographs (DX 1). She explained that one photograph depicted a picture of her sister's car. Another photograph depicted the call box that the police vehicle hit. Patterson stated that her sister was never able to repair her car and eventually it was towed away.

During cross-examination, Patterson said that she believed her sister made a police report regarding her car. She explained that her sister's car was not towed away in December 2004 but in April or May 2005 from a parking lot. Patterson stated that after seeing her sister's car get hit by the police vehicle, she did not call the police. She said that she informed her sister who went outside and spoke to someone from the Department about the car. Patterson testified that her sister was told to come down to the station house the following day to file a police report. Patterson stated that she did not know if the Respondent spoke to her sister that evening. She had no idea whether her sister was told that if a police report had to be prepared that night that the report would state that an

"unknown vehicle" hit her car pending the outcome of a police investigation into this matter. Patterson explained that once she told her sister about the damage to her car that was the extent of her involvement in this matter. She said that she did not accompany her sister to the station house the following day.

Patterson described the 4x4 as a rust-colored Jeep. She stated that she was unable to see the driver of the Jeep and had no idea what his race was. She could not recall the race of the police officers who exited their vehicle. Upon questioning by the Court, Patterson stated that if one looked at the photographs of the car (DX 1), it showed the dent that ran along the left side of her sister's vehicle which occurred on December 15, 2004.

Police Officer Francis Soto

Soto testified that he has been assigned to the 42 Precinct for the past four and one half years. He testified that on December 15, 2004, he was assigned to the 42 Precinct and was working a 3:00 p.m. to 11:35 p.m. tour of duty. He recalled that sometime between 8:00 - 8:30 p.m., he received an "85" over the radio that an officer needs assistance. Soto explained that there was a police chase and the officers who were chasing the suspects called for assistance. He noted that the officers ended up apprehending the suspects.

Soto stated that sometime after the officers apprehended the suspects, he responded to a location of a vehicle accident. When he arrived, he was informed by people on the scene that a police vehicle hit some of the cars parked on the street. Soto explained that even though he knew there was a police chase, he had no knowledge that

there was any police accident involved in that police chase. At some point Soto had a conversation with the Respondent back at the station house regarding what the people said took place. Soto said that the Respondent did not believe that a police vehicle hit the parked cars. The Respondent then instructed him to prepare a police accident report and state that an unknown vehicle hit the parked cars. Soto estimated that he remained at the location of the damaged vehicle between 30 and 45 minutes. He said that during that time, he made observations of the damaged vehicles. He explained that he made his own observations of the damaged vehicle before he called the Respondent to the scene. He further explained that the Respondent arrived at the scene and was there for about five minutes.

Soto was shown a copy of a Police Accident Report (DX 2) dated December 15, 2004. He noted that the report stated that there were three cars involved in the accident but there were no injuries. The registered owner of the parked vehicle was Joyce Patterson who resided at [REDACTED]. A box was checked on the report which noted that the vehicle that struck the parked vehicle left the scene. Under the portion of the report that stated "Accident Description, Officer's Notes," Soto read the following statement into the record:

"Vehicles 2 and 3 were parked when an unknown vehicle No. 1 sideswiped both vehicles while traveling westbound on [REDACTED]. Vehicle 1 fled the scene, complaint report was prepared."

Soto explained that he was instructed by the Respondent to write "unknown vehicle" in the Accident Report. He could not recall any specific conversation he had with any of the civilians regarding the accident. He stated that he did not recall having any

conversation with the Respondent regarding a police chase; he believed his conversation was limited to the accident.

During cross-examination Soto recalled that either he or his partner called the Respondent to the scene of the accident and he remained there for five minutes. Soto said that he could not recall the Respondent coming to the scene with anyone, but then his recollection was refreshed that the Respondent did have a driver. Soto said that based on the Accident Report, he did have a conversation with Joyce Patterson. Soto recalled that a Lieutenant Matteo was at the scene and that he was the highest ranking person that he saw on the scene. He stated that he did not have a conversation with Matteo over the radio.

Soto testified that he did not recall having any conversation with the Respondent who told him that he was instructed by Matteo to investigate the RMPs to see if they were involved in an accident. Soto said that he did not see an RMP or any other police vehicle hit the parked cars. Soto stated that he was never advised by the Respondent that he [the Respondent] made a final determination that the parked cars were not hit by a police vehicle. Soto stated that he was never made aware that there was ever a final determination as to whether a police car hit the parked cars. He stated that he was unaware as to whether the Police Report for this incident was ever amended. He said that he was never asked by the Internal Affairs Bureau (IAB) or any other investigative unit to amend the Police Report. Soto testified that a Complaint Report was prepared for this incident, but it was prepared by his partner.

During questioning by the Court, Soto stated that by the time he responded to the "85" call that an officer needs assistance, several police cars had already arrived. He

noted that he and his partner were in an unmarked police vehicle. He recalled that a suspect was already under arrest, but he could not recall what type of vehicle that suspect had been in.

Police Officer David Roberts

Roberts, a four and a half year member of the Department is currently assigned to Narcotics Borough Bronx where he has been assigned for the past five months. He testified that on December 15, 2004, he was working a 4:00 p.m. to 12:00 a.m. tour of duty. He received a radio run of a "53" car accident and he responded to the scene. When he arrived at the location of Prospect Avenue and [REDACTED] he was greeted by people on the street who informed him that a police vehicle hit their car. Roberts said that he called for a supervisor to come to the scene.

Roberts testified that the Respondent arrived at the scene and looked at approximately two cars. He could not recall how long the Respondent was at the scene and whether he spoke to any of the civilians. Roberts was shown a copy of a Complaint Report (DX 3). He stated that he prepared the Complaint Report and it referred to this incident of leaving the scene of an accident with property damage in front of 831 [REDACTED]. He noted that the time was recorded as 8:45 p.m. and that the date was December 15, 2004. Roberts read the summary of the Complaint Report into the record:

"TPO [Time and place of occurrence] CV (complainant/victim) vehicle was parked at above location when unknown vehicle side-swiped her vehicle causing damage to entire left side of her vehicle and then fled scene."

Roberts explained that it was determined by the Respondent after the investigation was completed that the vehicle that struck the civilian car was an unknown vehicle not a

police vehicle. He further explained that he did not put that information in the Complaint Report on his own accord. Roberts stated that at the time the car accident occurred, he was unaware that there was an accident which occurred as a result of a police chase.

During cross-examination, Roberts stated that he was aware that there was a police pursuit of a perpetrator within the confines of the precinct. He acknowledged that the pursuit was called off and everyone was told to slow down. Roberts admitted that it would have been a dangerous situation in the patrol area if the multiple car pursuits continued. Roberts said that he later learned that the perpetrator was apprehended and handcuffed at an intersection.

With regard to the civilian allegation, Roberts stated that the civilian only advised him that her car was hit by a radio motor patrol car (RMP). He said that she did not have a plate number or any other description of the police vehicle. Roberts said he could not recall if he asked the civilian for a description of the vehicle. Roberts also said that he could not recall whether he observed any blue or white paint on any of the civilian vehicles.

Roberts acknowledged that he completed the Complaint Report and he only filled in the information about an "unknown vehicle" because he was told to do that by the Respondent. Roberts said he could not recall the Respondent stating that Matteo was on the scene and that if any reports needed to be prepared now, it would have to state "unknown vehicle." Roberts said that no one ever requested him to amend the Complaint Report. He also said that the Respondent never signed off on the Complaint Report. A Sergeant Yvonne Gonzalez and a Sergeant Tuohy signed off on the report. Roberts testified that he did not know whether there was an ongoing investigation to determine

whether it was the perpetrator's car or an RMP that hit the parked vehicle. He stated that to this date he still did not know whether the Complaint Report was amended to reflect that an RMP actually hit the parked car.

Upon questioning by the Court, Roberts stated that when he responded to the radio run for the car accident, he was already aware of the police chase. Roberts said that when the Respondent responded to the scene of the accident, he did not mention the police chase to him because he thought he had heard about it over the radio as he did.

Sergeant Patrick Kelly

Kelly is a 22-year member of the Department currently assigned to Patrol Borough Bronx Investigations Unit where he has been assigned for approximately three years. Kelly stated that his unit handles cases involving allegations of misconduct, firearm discharges, lost property, disputed arrests, and off-duty domestic incidents. Kelly said that there came a time when he was assigned to the IAB case involving the Respondent. He explained that the initial allegation involved an improper report or failure to take a report and it also involved Soto. He said that the complainant alleged that a police vehicle struck her vehicle and she filed a police report about it. When she went to the station house to pick up a copy of the police report, it stated that an unknown vehicle struck her car. Based on this allegation Kelly said that he interviewed the Respondent with regard to the actions he took when he responded to the scene of the accident.

Kelly testified that during the course of the Respondent's Official Department Interview, he [the Respondent] stated that he responded to the scene and instructed his

officers to indicate on the Police Report that an "unknown vehicle" struck the civilian car. Kelly then conferred with the Department Advocate's Office and a decision was made to serve the Respondent with Charges and Specifications. Kelly said that he recalled the Respondent stating during his interview that he took investigative steps in this matter. He informed Kelly that he surveyed the RMPs in the command for damages consistent with the parked car and he did not find any. He then instructed his officers to report that an unknown vehicle struck the civilian vehicle. Kelly could not recall if the Respondent mentioned anything about a police chase in his interview. He stated that he only learned from the Respondent about Lieutenant Matteo after the Respondent was served with Charges and Specifications in this matter. He denied that the Respondent informed him of Matteo during the course of his Official Department Interview.

Kelly was shown photographs of the complainant's vehicle (DX 1). He stated that the photographs were taken by his partner Sergeant Olson. Kelly recalled having a conversation with the car owner named Joyce Patterson. He recalled that Joyce said to him that her sister and another neighbor or friend told her that during a police chase on the block, one of the police cars struck her [Joyce's] vehicle. Joyce then reported the incident to the police and when she picked up a copy of the police report, it said something different than what she reported to them.

Kelly said that he learned at a later point in his investigation that there was an accident involving an RMP and a perpetrator named Thomas Sprauve. He explained that there was paperwork which indicated that an RMP had struck a call box while pursuing Sprauve's vehicle. Kelly stated that he was able to confirm that there was damage to a Police Department vehicle on December 15, 2004 and the vehicle was involved in the

police chase. Kelly was shown a Unit Detail History List (DX 4). He stated that a marked RMP which was primarily white in color had a list of parts that were replaced on it in January 2005. Kelly explained that he could not investigate whether there was any damage to the vehicle driven by the perpetrator, Sprauve because paperwork related to the accident had been misplaced administratively for a few months. By the time the paperwork was found, it was too late to proceed on investigating Sprauve's vehicle.

Kelly testified that he spoke to Lieutenant Matteo about this incident. Matteo informed him that the Respondent told him there was a car with damage and the complainant alleged that an RMP caused the damage. Matteo testified that he directed the Respondent to survey the RMPs in the command to see if there was any damage consistent with what the complainant was alleging. Matteo said that he was investigating the police chase and arrest as well as the accident allegation the Respondent informed him of. Kelly said that he did not recall whether Matteo told him that he advised the Respondent to tell his officers to put unknown vehicle on the Police Accident Report.

During cross-examination, Kelly testified that he only spoke to Matteo about this incident a month or two ago for about two or three minutes in an informal manner. He explained that Matteo was now a retired member of the service. Kelly acknowledged that he knew Matteo had been on the scene of the car chase and believed he learned that information from a Detective DiPaola. Kelly said it was also possible that the Respondent informed him during his Official Department Interview that Matteo was at the scene of the police chase incident. Kelly refreshed his recollection by reviewing the transcript of the Respondent's interview. He admitted that the Respondent informed him during his interview that Matteo was at the scene and took control. Kelly said that he

never conducted an Official Department Interview of Matteo because he was out sick at one point and then he retired. He had no further explanation as to why Matteo was never interviewed. Kelly was questioned as to whether the Respondent had a driver on the day of the incident. He said that he did not know. Kelly also said that he knows he did not conduct an interview of the Respondent's driver.

Kelly said that when he interviewed the Respondent, he could not recall if he asked him whether he spoke to the complainant. He recalled that the complainant could not identify the RMP by number. Kelly stated that he never asked him whether Matteo took control of the scene. He never asked him whether Matteo ordered the Respondent to determine whether an RMP or a civilian vehicle hit the parked cars. He stated that he knew Matteo was on the scene of the car chase which was a few blocks away from the location where the parked vehicles were hit. Kelly admitted that he did not know Matteo gave the Respondent an order to determine what was going on and to state in any police reports "unknown driver" until a determination was made as to what had transpired. Kelly acknowledged that had he known this information, it would have changed his opinion as to whether charges should have been filed against the Respondent.

Kelly admitted that during his investigation, he learned from DiPaola and another officer that the perpetrator's car may have hit the parked civilian vehicles. Kelly said the statement was given credence. Kelly stated that DiPaola was in the vehicle that hit the call box. Kelly was informed by DiPaola that as he was driving, an RMP came in the opposite direction along with the defendant's vehicle. When the defendant's vehicle approached, he swerved his vehicle and backed into the call box. He acknowledged that

DiPaola denied hitting any parked cars. Kelly stated that to this day, he still does not know whether an RMP hit the parked cars.

Kelly stated that he reviewed the pictures of the complainant's car. He observed a light colored paint on the rear quarter panel of the car near the wheel well on the driver's side. He did not recall seeing any other damage. With regard to the missing paperwork in this matter, Kelly testified that paperwork regarding the Department vehicle, the accident involving Department vehicle number 2428, and the line of duty paperwork were all misplaced at the station house.

Upon questioning by the Court, Kelly testified that the damaged vehicle, number 2428 was assigned to the 42 Precinct. He stated that there were original, color digital photographs maintained in the borough, but since the photos were digital, they were not much clearer than the photocopies in evidence. He said he was not sure that the original photos were still in the folder maintained at the borough. Kelly said that during his interview of the Respondent, he answered all of the questions that he posed to him. He noted that the Respondent did not volunteer any additional information.

During *voire dire* by the Respondent regarding the Unit Detail History Report for RMP No. 2428, (DX 4), Kelly stated that even though the incident occurred in December 2004, there were repairs made to the RMP on January 5th, 6th, 7th, 10th and 12th 2005. He noted that there was a repair in December 2004 but it involved towing and labor. Kelly said there were repairs made to the battery, battery cables, bulbs, wiring and the fuel system. He noted that on January 5th, there were repairs made to the "cab and sheet metal and trunk." Kelly said he did not know if this involved any front end damage because he is not the mechanic who repaired the vehicle and he is unable to interpret the report.

Kelly was shown a Police Accident Report dated December 15, 2004 prepared by Matteo (Respondent's Exhibit (RX) A. It referred to the police vehicle involved in the chase of the suspect. Kelly noted that the report listed damage to the left, front driver's side and the center of the rear of the vehicle.

Detective Robert DiPaola

DiPaola is a 16-year member of the Department currently assigned to 42 Precinct. He testified that he performs patrol duties during the midnight tour. He stated that he was working on December 15, 2004. He recalled that he made an arrest of Sprauve that night for a vehicle violation. DiPaola explained that Sprauve committed a VTL violation and refused to stop.¹ This resulted in a police pursuit in which his police vehicle and Sprauve's were "zigzagging" through several streets in the confines of the command. Eventually Sprauve's vehicle was stopped and he was arrested. DiPaola further explained that Sprauve was charged with reckless endangerment, assault on a police officer, and leaving the scene of an accident.

DiPaola stated that he prepared a Police Department Complaint Report in connection with this incident (DX 7). He said that the complaint report stated that Sprauve went through a steady red light. The officers attempted to pull him over by putting on their emergency lights but the vehicle refused to stop. Sprauve zigzagged through several streets and it was put over the radio that they were attempting to stop a vehicle. Another RMP attempted to "box in" Sprauve by driving up a street in the opposite direction. Sprauve attempted to pass the RMP and in the process hit the RMP and several parked cars. DiPaola said that he observed Sprauve hit the parked cars.

¹ "VTL" is the acronym for Vehicle and Traffic Law

DiPaola said that his supervisor on that night was Matteo because he verified the arrest of Sprauve. DiPaola reviewed the Complaint Report and noted that it had the name of the Respondent as the person notified. DiPaola said he did not know that the Respondent was the supervisor of the vehicle pursuit. DiPaola was shown the Arrest Report for Sprauve (DX 9). He said that the Arrest Report had essentially the same narrative as the Complaint Report and it is supposed to. DiPaola recalled having a conversation with Matteo regarding the arrest, but he did not have any such conversation with the Respondent.

DiPaola was also shown the Command Log for December 16, 2004 (DX 6). DiPaola testified that the desk officer at the command is responsible for the contents of the Command Log. With regard to his own responsibilities involving a defendant, he explained that he presents the defendant to the desk officer so that the desk officer can verify the arrest and then he [the desk officer] stamps the page in the Command Log and writes down the pedigree information and other arrest-related information. He could not recall who the desk officer was when Sprauve was presented. He noted that the stamp had the name "Vasquez," but he explained that the stamp would usually have the name of the desk officer who verified the arrest.

During cross-examination, DiPaola acknowledged that he had an Official Department Interview in relation to this matter on October 27, 2005. He said that he was in the car that initiated the chase of Sprauve. He admitted that he observed Sprauve's car hit the parked vehicle and that he disclosed this information during his interview with Kelly. He acknowledged saying, "I just want to make it straight for the record, it wasn't a Department vehicle accident, it was a defendant hitting a civilian vehicle." He also

acknowledged stating that when asked who the supervisor present at the scene was, he stated that he only recalled Matteo being at the scene. DiPaola said that he did not observe any Department vehicle hit any parked cars.

The Respondent's Case

The Respondent called Police Officer Michael Loiacono, retired Lieutenant Thomas Matteo, and testified in his own behalf.

Police Officer Michael Loiacono

Loiacono is assigned to the Domestic Violence Office at the 42 Precinct where he was assigned on December 14, 2004. He stated that on that date, he was on meal in the lounge of the station house with Police Officer Perrault when he heard over the radio that there was a vehicle pursuit of a defendant. He stated that he and Perrault entered their RMP, he was the recorder and Perrault was the operator. A third police officer Sean Donovan sat in the rear passenger seat. Loiacono said that as they proceeded on the road, they observed Sprauve's vehicle turning onto [REDACTED] from Prospect Avenue. He recalled that Sprauve had a minivan he believed it was an MPV, but he could not recall the color.

Loiacono said that Sprauve was proceeding westbound down [REDACTED] while they were proceeding the wrong way eastbound on [REDACTED] a one-way street. When Sprauve's vehicle reached the RMP, he slowed down and the RMP stopped. Sprauve then slowly proceeded between the RMP and the vehicles parked on the north side of [REDACTED] Loiacono believed Sprauve's vehicle came in contact with the parked cars

as well as the RMP. Loiacono testified that Perrault then put the RMP in reverse as it proceeded east on [REDACTED] crossed over Union Avenue, jumped the curb where it struck a call box and a retainer wall. Loiacono said he was in RMP 2428. He said that his RMP did not come into contact with any parked cars on [REDACTED]. He did not see any police cars come in contact with the parked cars. He noted that there was one other police car that he observed that day and that was the initial car that was pursuing Sprauve. Loiacono said at some point he heard over the radio that the defendant was caught and the car pursuit was called off.

During cross-examination, Loiacono said that he had no idea what speed the RMP was going as it reversed. As a result of the accident, he noted that he and the other two police officers suffered minor injuries and they all went to the hospital. Loiacono recalled preparing a Line of Duty Injury Report with regard to the incident. Loiacono was shown a scratch copy of the report (DX 5). Loiacono said that he filled out the top portion of the report because he recognized his handwriting and it stated his name and pedigree information, but he did not complete the rest of the report and never saw the completed report before this date. He explained that the portion of the report that referred to the supervisor's report of the injury was normally completed by a patrol supervisor. He further explained that Sergeant Richard Kenny was his supervisor on that date and he would have completed the report. Loiacono said he had no conversation with the Respondent on that date regarding the vehicle pursuit and the Respondent was not his supervisor.

Loiacono testified that after the RMP hit the retaining wall, they were able to move the RMP a block or two away to the area where the pursuit had ended. They

reported to the hospital and did not return to the area where the call box was hit. He recalled that the RMP had damage to the trunk, and the rear bumper. He noted that the rear bumper was off because it hit the call box. He did not participate in the arrest of Sprauve because he was already in handcuffs when he arrived at the location. Loiacono said he did not see Matteo at the scene of the vehicle pursuit. He believed Matteo was the person who did call off the vehicle pursuit.

During redirect examination, Loiacono explained that a "scratch copy" of a report is a handwritten draft that is usually edited and revised and used to prepare the typewritten, final copy of the report. Loiacono was shown a typed copy of the Line of Duty Injury Report (RX B). He explained that the report was the final copy of the Line of Duty Report. He noted that the narrative on the final report stated that he was injured after being involved in a vehicle accident. It noted that the driver of the civilian vehicle was subsequently arrested and charged with reckless driving.

Upon questioning by the Court, Loiacono testified that as a result of hitting the call box, his RMP sustained damage to the rear bumper. He said that there was also damage to the front quarter panel on the driver's side from being side swiped by Sprauve's vehicle. He stated that to his knowledge, there was no damage to the front bumper of the RMP. Loiacono said that neither he, Perrault or Donovan apprehended Sprauve. He noted that his accident took place at [REDACTED] and Union Avenue, and Sprauve was arrested at [REDACTED] and Boston Road, two to three blocks away from where the call box was located. Loiacono said he had no recollection of seeing the Respondent at the location where Sprauve was arrested.

Lieutenant Thomas Matteo

Matteo testified that he retired from the Department in October 2005 and his last assignment was as the Special Operations Lieutenant at the 42 Precinct. He is currently employed as a mortgage broker. Matteo stated that he recalled a car pursuit within the confines of the 42 Precinct on December 14, 2005 in the vicinity of [REDACTED] and Boston Road. He recalled that a defendant was arrested and there was a lot taking place at the same time including a possible accident involving an RMP. He explained that he had to investigate whether there was any injury to the police officers involved in the chase; he had to determine if any of the civilians were injured. He explained that at one point he called off the police pursuit, but it continued for some time until it ultimately ended. Matteo testified that he took charge at the scene and at some point the Respondent approached him and asked if there was anything that he needed to do. He advised the Respondent that the scene he [Matteo] was at was the priority at this point. He told the Respondent that a civilian was complaining that her car was hit by an RMP. Matteo told the Respondent to investigate that matter, make sure that there were no civilian injuries and to report back to him. He said that if an accident report had to be prepared, just complete a very "generic" accident report and he would take care of the matter later.

Matteo stated that the Respondent reported back to him that there were no injuries at that location. He also informed him that he looked at the cars and he did not find any damage consistent with the civilian cars. Matteo said the Respondent could not say that there was actually an accident which involved an RMP. Matteo explained that he was also concerned that the defendant's vehicle had struck the parked cars on Home and

Prospect. Matteo stated that he instructed the Respondent to inspect all of the vehicles at the command to determine if any of them had damage consistent with what the complainant complained about. The Respondent later spoke to him at about 1:00 a.m. at the station house and advised him that he checked all of the RMPs and none of them looked like they were in an accident. Matteo said he thanked him for his assistance, told him there was nothing else for him to do and told him that he could go home. Matteo recalled saying words to the effect, "I got it," this meant that he would handle the matter from that point.

Matteo testified that he was notified at some point that he was going to have an Official Department Interview about this matter. He said that he was not contacted about an interview in 2004. He stated that it was not until a month or two ago in 2007 that he was contacted by Kelly. He stated that they had a brief conversation about what had happened and that it lasted between a minute to a minute and a half.

During cross examination, Matteo testified that prior to his retirement in October 2005, he did not take any terminal leave related to his impending retirement. He stated that he worked up until the last day. With regard to the car chase, he stated that he had a conversation with the Respondent regarding the condition of Sprauve's vehicle. He thought he told him to check Sprauve's vehicle, but he was not certain and believed he spoke to him about this matter as Sprauve was being placed under arrest. Matteo was shown a copy of a Police Accident Report (DX 8) involving vehicle number 1 driven by Perrault and vehicle number 2 driven by Sprauve dated December 15, 2004. Matteo stated that the report had his name and signature on the bottom. Matteo said that the

report noted damage to Perrault's vehicle in the front driver side and damage to the rear of the vehicle.

Matteo was then shown an unsigned Police Accident Report for the same incident dated December 15, 2004 (DX 8A). He stated that he could not state for certain that he had seen the unsigned Police Accident Report before. He had no explanation as to why the unsigned Police Report had all the damage on the rear of the RMP, but the signed report had damage to the rear and the front of the RMP. Matteo acknowledged that he supervised the police chase as well as the arrest of Sprauve. He stated that if his name was on a complaint report as a supervisor, he would likely be familiar with the case. He stated, however, that in his 15 years as a supervisor either the patrol supervisor or the desk officer could sign off on an arrest.

During further direct examination, Matteo stated that the unsigned copy of the Police Accident Report looked like a draft copy or scratch copy of the police report. He said that in his 21 years as a member of the Department, he has seen many scratch copies of reports and the scratch copies usually had changes that were different from the final copy of the report. Matteo also said that he was in charge of the investigation and at no point was the Respondent in charge of the investigation.

During further cross-examination, Matteo was shown a copy of the final Line of Duty Injury Report for Loiacono (RX B). He was asked why there was no mention of the damage to Sprauve's vehicle in the report and Matteo answered, "It wouldn't be mentioned."

During questioning by the Court, Matteo testified that in his years with the Department, a supervisor would not be listed as verifying an arrest unless that supervisor

had some knowledge of the arrest situation, even if it was limited information at the time. He explained that he could not recall with specificity the exact instructions he gave to the Respondent, but he recalled telling him to inspect the RMPs in the command for damage. He explained that he was receiving telephone calls from the borough as well as the duty captain at the same time, so he could not be exact with what he was directing the Respondent to do. Matteo further explained that if he had to prioritize the two locations, the one with the police chase where officers were injured; and the one where there was property damage to parked civilian vehicles with no injuries, he had to prioritize the location he was at with the police chase, injured officers and Sprauve being placed under arrest. He further stated that the report regarding the property damage could be addressed at a later time.

During further cross-examination, Matteo stated that once he learned there was no injury to the civilians where the parked vehicles were hit, he instructed the Respondent to put "unknown vehicle" on the Police Report so that the incident could be documented and until he had an opportunity to thoroughly investigate the matter and interview the civilians involved.

The Respondent

The Respondent is a 16 ½-year member of the Department currently assigned to Highway Unit No. 4 in Manhattan. He testified that on December 15, 2004, he was a police officer assigned to the 42 Precinct Station house in the Bronx. While working on that date, the Respondent stated that he heard transmissions over the radio that there was some type of pursuit on [REDACTED] Prospect Avenue and also Boston Road. The

Respondent said that he was at the station house at the time and decided to get involved in the pursuit. He said within a minute or two, the pursuit was called off. He noted that he did see Sprauve's vehicle in the vicinity of Boston Road and Home Street. He explained that Sprauve was already in handcuffs and there were several law enforcement personnel on the scene. He further explained that there were at least ten police vehicles along with supervisors on the scene and he recalled seeing Matteo.

The Respondent said that Matteo took control of the location and he had a conversation with him. Matteo informed him that there was an arrest with regard to the vehicular pursuit, but he was receiving a call for a supervisor by a sector in the vicinity of [REDACTED] and Prospect Avenue. Matteo further stated that there was some type of accident. Matteo advised him that if the civilians were alleging some type of damage and wanted an accident report right away, the report would have to state "unknown vehicle" because he was in the middle of his own investigation. He said the civilians had the choice of also waiting until he completed his investigation. He explained that he wanted the Respondent to do an investigation, inspect any damage to any RMPs and civilian automobiles and report back to him.

The Respondent explained that he arrived at the location of [REDACTED] and Prospect Avenue. He saw Police Officers Roberts and Soto. He was advised that a civilian was alleging that a marked RMP struck some civilian autos as it chased a suspect. The Respondent spoke to the civilian. He could not recall if she stated that she observed it herself, but she stated that an RMP sideswiped her vehicle while chasing a suspect. The Respondent recalled that the woman did not have an RMP number for the vehicle that struck her car. The Respondent said that he explained to the woman that if she

wanted to have an accident report at that moment, he would have to write "unknown vehicle" on the police report because his supervisor was currently investigating another matter. He also told her that she had the option to wait for his supervisor to complete the investigation and then he would assist her with her police report in this matter. The Respondent said that he left the location at that time but learned that the woman opted to complete the accident report at that time. The Respondent said that before he left the location, he advised Soto and Roberts of Matteo's direction regarding the wording "unknown vehicle" in the police report.

The Respondent said that he went to the location where Matteo and Sprauve were. He explained to him what the civilian was alleging. Matteo directed him to inspect all of the RMPs in the command and determine if any of them had damage consistent with the damage done to the civilian autos. The Respondent said he did this check along with his partner Police Officer Silardi and they did not find any vehicles with damage consistent with the sideswipe damage found on the parked, civilian autos. He relayed this information to Matteo who thanked him for it. The Respondent said he asked Matteo if there was anything else he needed to do, and Matteo said, "No, I got it, thank you, good night." The Respondent stated that he ended his tour at that point.

The Respondent explained that once Matteo told him that he could go home, he believed that Matteo was handling the rest of the investigation. He explained that he did not prepare any paperwork with regard to this matter. He stated that he did not prepare any of the arrest paperwork related to the apprehension of Sprauve nor did he sign off on any paperwork prepared by anyone else. The Respondent also stated that he did not think

it was misconduct for a police officer to leave the scene of an accident that involved property damage when the officer was in pursuit of a suspect.

During cross-examination, the Respondent acknowledged that he spoke to a female civilian about an RMP striking her parked car, but he denied that the civilian was either Patterson or her sister Joyce. He denied preparing any paperwork in connection with the arrest of Sprauve. The Respondent was shown a copy of the Command Log for December 16, 2004 (DX 6). The Respondent reviewed the document and noted the entry related to the arrest of Sprauve. He noted that the entry was a Department arrest stamp and the information was filled in by someone. He noted that the name Vazquez was written in the command log, but he denied that he wrote his name or signed his name in the Command Log. He also noted that the spelling of his name was written incorrectly in the Command Log.² The Respondent explained that since he was the patrol supervisor prior to ending his tour, it was likely that the midnight desk officer placed the stamp in the Command Log and as a common practice, used the name of the patrol supervisor on duty during the earlier tour as the supervisor who verified the arrest of Sprauve. The Respondent explained that the name in the Command Log was handwritten, not a signature and it did not properly spell his last name.

The Respondent stated that had he been the desk officer on this date, he would have likely reviewed the arrest paperwork and Complaint Report in connection with the Sprauve arrest, but he was not the desk officer. He stated that he is not always able to review all of the paperwork prepared for an arrest. He stated that in this instance, he never knew the defendant's name. The Respondent said that he knew Sprauve's vehicle

² The Respondent's name is spelled V-a-z--q-u-e-z and the spelling on the Command Log was V-a-s-q-u-e-z.

went down the same street that the civilian complained her vehicle was hit. He stated that he never looked at Sprauve's vehicle to determine if there was any damage consistent with the complainant's vehicle. The Respondent was shown a copy of the Complaint Report for Sprauve (DX 7). He again noted that he had never seen the report prior to 2007 when he reviewed it in his attorney's office. He noted that he was unaware that he was listed as the supervisor who was notified of the arrest.

The Respondent acknowledged that Matteo directed him to investigate and inspect the RMPs in the command as well as the civilian autos that may have been hit by the police vehicle. He stated that he did not include in this investigation the police cars that were involved in the police pursuit. He admitted that there was a connection between the police pursuit and the civilian complaint. The Respondent said even though he was aware of the police pursuit, he was unaware that the defendant's vehicle came in contact with the police vehicle and as such he did not inspect it. The Respondent said he was not informed by Soto and Roberts that more than one civilian complained of their car being hit by an RMP. The Respondent said he knew of one civilian and spoke to her.

The Respondent denied that he ever reviewed the Police Accident Report prepared by Soto. He noted that in most instances, he would only review the report if he were the desk officer at the station house. The Respondent recalled being interviewed in an Official Department Interview. He denied that he was ever told by the interviewer Kelly what the allegations were against him. He explained that he was interviewed as a witness in the police pursuit case which resulted in an RMP accident. He further explained that he did not believe that the interview involved any of the instructions that

he received from Matteo and no one asked him about Matteo in the interview. He recalled that he did mention that Matteo was on the scene in his interview.

During further direct examination, the Respondent stated that he reviewed a transcript of his Official Department Interview and it was eight pages, the eighth page stated that it was the end of the document. He noted that the first page was about him and his pedigree information. He noted that pages 2-7 involved the police chase and that he was asked at the end if he was satisfied with his representation. The Respondent estimated that the interview lasted about a minute and forty five seconds. The Respondent said he was not asked anything about what Matteo did at the scene, whether Matteo gave him any orders and there were no questions about Accident Reports or notifications made.

During further cross-examination, the Respondent acknowledged that he was asked during his Official Department Interview whether he was summoned to [REDACTED] and Prospect Avenue. He admitted that he was and responded that he had to determine whether there was damage to parked vehicles at the location. He recalled that when asked which officers requested his presence, he responded that Roberts and Soto requested his presence. He stated that he did not think it was necessary to mention that he was ordered to the location by Matteo.

During questioning by the Court, the Respondent testified that during his Official Department Interview he only answered questions posed to him. He said that he would add something if it related to the questions posed to him. The Respondent, after reviewing his Activity Log testified that on December 15, 2004 he worked from 2:50 p.m. to 11:47 p.m. He stated that he was not called to the scene of the car chase, he

responded there on his own based on what he heard over the radio. He stated that he never was asked to verify the arrest of Sprauve; he believed Matteo verified the arrest. He explained that when he was in the command, he was on meal and no longer on patrol and that Matteo had taken over patrol. He stated that within seconds of arriving at the scene where Sprauve was arrested, Matteo told him to go to the scene of the car accident and examine the vehicles.

The Respondent testified that when he was examining vehicles on December 15, 2004, he examined the RMP assigned to the domestic violence unit that hit the call box. He explained that he observed the trunk with a dent on the driver's side. He also recalled seeing either a dent or a tear on the bumper on the driver's side. He explained that these areas of damage were not consistent with a vehicle that had sideswiped parked cars because there was no damage to the RMP on either side. The Respondent could not recall exactly but he thought there may have been a "dent or something" on the front driver's side.

The Respondent reviewed the Command Log (DX 6). He stated that according to the Command Log, Sprauve was taken to Bronx Central Booking at 1500 hours. The Log also noted that Sprauve was taken to Lincoln Hospital for treatment and then released; and then he was transported to the station house because the arrest stamp was dated December 16, 2004 at 2:25 a.m. The Respondent said that he was unaware that Sprauve was taken to the hospital on December 15, 2004.

During further cross-examination, the Respondent stated that he used his Activity Log to determine what hours he worked on December 15, 2004. He acknowledged that his Activity Log had no entries regarding this incident.

During further questioning by the Court, the Respondent acknowledged that he looked at three to five civilian vehicles that were parked and he observed two to three cars with the sideswipe damage. He noted that the officer who made the arrest of Sprauve was a detective specialist assigned to the 42 Precinct. He said that he would be his supervisor until his tour ended and then the next patrol supervisor would be his immediate supervisor.

FINDINGS AND ANALYSIS

The Respondent stands charged with the sole specification of engaging in conduct prejudicial to the good order, efficiency and discipline of the Department in that he failed to notify his Commanding Officer or IAB about an allegation of serious misconduct when a civilian informed him that an RMP struck her vehicle and fled the scene when in pursuit of another vehicle. I find the Respondent Not Guilty of this allegation. The salient section of the Patrol Guide, namely section 207-21 states in pertinent part:

All members of the service must be incorruptible. An honest member of the service will not tolerate members of the service who engage in corruption or serious misconduct. All members of the service have an absolute duty to report any corruption or serious misconduct, or allegation of corruption or serious misconduct, of which they become aware. (Emphasis added).

The Patrol Guide goes on to define corruption/serious misconduct:

Criminal activity or serious misconduct of any kind including the use of excessive force or perjury that is committed by a member of the service whether on or off duty. (Emphasis added).

The Patrol Guide then requires a notification to IAB about the corruption or serious misconduct.

In this instance, the civilian allegation was that a police car hit parked civilian cars while in pursuit of a suspect. Even if this allegation is correct, it is not misconduct.

At best, this is an accident which would not amount to corruption or serious misconduct within the meaning of the Patrol Guide that required a notification to IAB by the Respondent. The Respondent testified credibly that when he was interviewed in this matter, he was not told what the allegations were and he was interviewed as a witness. The police officers were taking police action, which no one would expect them to discontinue because they may or may not have hit a parked vehicle during the pursuit. All uniformed members of the service who testified at this proceeding, including retired Lieutenant Matteo testified that a police officer would not be expected to suspend a police pursuit if incidental property damage occurred during the pursuit. This is not the same situation as a civilian who engages in criminal activity by leaving the scene of a vehicular accident.

Evidence adduced at trial established that there was a police pursuit of a vehicle that committed a Vehicle and Traffic Law infraction. During the course of the initial police stop, the suspect, Sprauve, fled which resulted in a police pursuit of him. Sprauve drove through the city streets with the police pursuing him and he was eventually stopped and arrested. At the scene of the arrest, police officers who were involved in the police chase suffered injuries and were transported to the hospital. It was also established that Sprauve sustained some injury and was also transported to the hospital. What was also established at trial was that at least one member of the service, DiPaola, who pursued Sprauve testified in Court and stated at his Official Department Interview that Sprauve struck the parked cars as he fled. Moreover, there was a lieutenant, Matteo, at the scene of the police chase and subsequent arrest who testified that he took control of this

investigation. He stated that he prioritized, dealing first with the injuries to his officers, then the arrest and injury of Sprauve. He was never formally interviewed.

There was a great deal of evidence presented at this proceeding which dealt with the preparation of paperwork in this matter. The focus seemed to be on whether the Respondent improperly instructed his subordinates to write "unknown vehicle" on the Police Accident Report. It must be noted that the Respondent is not charged with misconduct related to the preparation of paperwork including the Police Accident Report. Moreover, had he been charged, it is unclear that this amounted to misconduct since he was directed to state this information in the police report by Matteo.

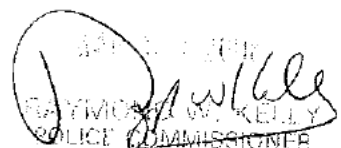
Given the fact that the Assistant Department Advocate was unable to establish by a preponderance of the credible evidence presented at this proceeding that the Respondent had a duty to report to IAB what amounted to an accident with property damage only during a police pursuit, I find the Respondent Not Guilty of this Specification.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner - Trials

APPROVED


RAYMOND W. KELLY
POLICE COMMISSIONER